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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of:

Advanced Television Systems and  
Their Impact Upon the Existing  
Television Broadcast Service

MM Docket No. 87-268

Comments Of Association Of America's Public  
Television Stations, Corporation For Public  
Broadcasting, And Public Broadcasting Service  
On Further Notice Of Proposed Rulemaking

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### SUMMARY OF ARGUMENT

Public Television urges the Commission to adopt a Table of Allotments/Assignments that pairs ATV channels with NTSC channels in a manner that optimizes spectrum efficiency and, to the extent feasible, permits co-location of NTSC and ATV transmitter sites and replication of NTSC coverage. The Commission's proposed first-come, first-served procedure will not achieve these objectives and could adversely affect the orderly transition to ATV by impairing the ability of stations to co-locate their transmitter sites.

The first-come, first-served procedure would have a particularly deleterious effect on public television service because it provides no mechanism for reserving ATV channels for noncommercial use. Furthermore, it would disadvantage noncommercial stations, the vast majority of which will not be able to apply for ATV channels on the first day that applications are accepted. While some of those stations may be able to apply for channels later during the proposed initial two-year filing window, stations applying later are likely to end up with the least desirable channels. That could result in a reduction of their coverage areas and make it more expensive for them to construct their ATV facilities, since they would be less likely to be able to co-locate their ATV and NTSC transmitters.

If, notwithstanding the virtually universal consensus favoring the pairing of ATV and NTSC channels, the Commission decides not to adopt that approach, Public Television urges it to

set aside and reserve for noncommercial use a specific ATV channel for each reserved NTSC channel prior to opening the filing window. This is the only way to assure, under a first-come, first-served regime, that ATV channels are set aside for noncommercial use and that public television will not be relegated to inferior channel assignments. In reserving channels, the Commission should select channels, to the extent feasible, that will permit existing public television stations to provide ATV service from their current antenna sites and throughout their current service areas.

Finally, if there are insufficient ATV channels to accommodate all existing licensees and permittees with constructed facilities, established Congressional policies require that the Commission ensure that operating public television stations are assigned ATV channels so that public television service continues to be available throughout the country.

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To: The Commission

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Television Stations, Corporation For Public  
Broadcasting, And Public Broadcasting Service  
On Further Notice Of Proposed Rulemaking

The Association of America's Public Television Stations ("APTS"), the Corporation for Public Broadcasting ("CPB"), and the Public Broadcasting Service ("PBS") (collectively referred to as "Public Television") submit these comments in response to the Commission's Second Report and Order/Further Notice of Proposed Rulemaking released May 8, 1992 ("Further Notice") in the above-captioned proceeding.<sup>1</sup>

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<sup>1</sup> Public Television filed Comments in this proceeding on December 20, 1991, Reply Comments on January 21, 1992, and a Petition for Clarification and Partial Reconsideration on June 22, 1992. APTS and PBS have also joined in the Joint Broadcasters Comments filed today, which address issues of common concern to commercial and noncommercial broadcasters.

**I. The Commission Should Adopt A Table Of Allotments That Pairs ATV Channels With NTSC Channels In A Manner That Optimizes Spectrum Efficiency And, To The Extent Feasible, Permits Co-Location of NTSC And ATV Transmitter Sites And Replication Of Existing Coverage Areas.**

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As the Commission acknowledges in the Further Notice, most of the parties filing Comments on the Commission's earlier Notice of Proposed Rulemaking<sup>2</sup> advocated an allotment/assignment procedure under which the Commission would match specific ATV channels with existing NTSC allotments. See Further Notice at ¶ 32. For example, the Joint Broadcasters strongly urged the Commission not only to allot ATV channels to each community, but also to match specific ATV channels with the NTSC channels listed in the current Table of Allotments.<sup>3</sup> In order to optimize spectrum efficiency and maximize the extent to which stations could replicate their existing coverage areas, they urged the Commission to pair ATV and NTSC channels, to the extent possible, based on current transmitter sites.<sup>4</sup> The Advisory Committee on Advanced Television Service urged the Commission to adopt a similar allotment/assignment scheme simultaneously with selection of an ATV technical standard. See Advisory Committee Fifth Interim Report at 12.

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<sup>2</sup> See Notice of Proposed Rulemaking, 6 FCC Rcd 7024 (1991).

<sup>3</sup> See Joint Broadcaster Comments dated December 20, 1991, Section I.B.

<sup>4</sup> See id.

Unfortunately, the Commission did not follow these recommendations, citing concern that there may be a "significant number of cases in which an acceptable degree of equivalency simply does not exist," and that a "simple matching scheme" may not be feasible. See Further Notice at n.91. It also questioned its ability to predict which channels licensees might prefer. See id. The Commission thus concluded that it is doubtful that it "could fashion a simple and efficient method which would automatically lead to the right outcome in each market." Id. Accordingly, it proposed, as it had done earlier, to require all existing television stations, both commercial and noncommercial, to negotiate with each other regarding ATV channel assignments after the Commission issues its proposed Final Table of Allotments. If the stations in any market cannot agree on an assignment plan, the Commission proposed a first-come, first-served procedure to assign channels to specific applicants. See Further Notice at ¶ 35.

**A. The Commission's Proposal Sacrifices Spectral Efficiency for Administrative Convenience.**

While it is undoubtedly true that no Commission pairing plan would achieve a perfect matching of channels or satisfy all existing stations, Public Television does not believe that that shortcoming is an adequate reason for the Commission to eschew all efforts to adopt a rational spectrum assignment plan. For the reasons discussed in the Joint Broadcasters' earlier Comments and those filed today, a rational pairing of channels based on

engineering considerations -- even if imperfect -- would achieve much greater spectrum efficiency than the proposed free-for-all race for spectrum.<sup>5</sup> Accordingly, Public Television joins the Joint Broadcasters in strongly urging the Commission to pair ATV and NTSC channels.

**B. The First-Come, First-Served Assignment Procedure Would Undermine the Commission's Noncommercial Reservation Policy and Adversely Affect the Availability of Universal Public Television Service.**

As explained in Public Television's Petition for Clarification and Partial Reconsideration in this proceeding, the first-come, first-served procedure would have a particularly deleterious affect on Public Television as it would undermine the Commission's long-standing noncommercial reservations policy and Congress' historic commitment to universal public television service.<sup>6</sup> Although the Commission reaffirmed in its Further Notice the importance of continuing to reserve spectrum for noncommercial use,<sup>7</sup> the proposed procedure provides no mechanism for reserving ATV channels. Furthermore, it could adversely affect the ability of public television stations to maintain

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<sup>5</sup> See Joint Broadcasters Comments dated December 20, 1991, Section I.B.; Joint Broadcasters Comments dated July 17, 1992, Section I.

<sup>6</sup> See Public Television Petition for Clarification and Partial Reconsideration at 8-12.

<sup>7</sup> See Further Notice at ¶ 37. In that decision, the Commission decided both to preserve existing vacant noncommercial allotments and to pair those allotments with ATV channels unless there is no way to award an existing broadcast licensee an ATV channel without either using a vacant noncommercial allotment or leaving such an allotment without a paired ATV channel. See id.



their current service areas and could limit their ability to co-locate their ATV and NTSC facilities. For these reasons, in addition to those set forth in the Joint Broadcasters' Comments,<sup>8</sup> Public Television has opposed, and continues to oppose, any proposal to employ a first-come, first-served procedure to allocate or assign ATV channels.

As Public Television noted in its Petition for Clarification and Partial Reconsideration, the proposed first-come, first-served procedure provides no mechanism for reserving channels for noncommercial use. This is of substantial concern to Public Television because many existing noncommercial licensees will not be able to apply for an ATV channel within the two-year protected filing window for financial or other reasons. Consequently, unreserved ATV channels are likely to be lost to commercial entities that can apply for them before noncommercial applicants are in a position to do so. Moreover, since the Commission will not accept applications for vacant noncommercial allotments during the initial filing window,<sup>9</sup> the proposed

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<sup>8</sup> See Joint Broadcasters' Comments filed July 17, 1992, Section I.

<sup>9</sup> See Public Television Petition for Clarification and Partial Reconsideration at 7-8. The Commission has proposed to allow only existing licensees, permittees, and applicants who had applications on file on the date the Commission adopted its Notice of Proposed Rulemaking to file for ATV channels during the initial two-year filing window. See Further Notice at ¶ 8. Nevertheless, consistent with the Commission's decision to pair ATV channels with vacant noncommercial allotments whenever possible, Further Notice at ¶ 37, those allotments should be treated on a par with existing broadcasters and should be paired with ATV channels in the initial distribution of channels.

procedure would not assure that ATV channels are reserved and paired with those allotments, as the Commission intends.

As discussed in Public Television's previous filings, the Commission historically has reserved channels for noncommercial use because noncommercial entities generally do not have the resources to compete effectively with commercial applicants for spectrum, and usually need more time than commercial applicants do to raise funds to build facilities and establish programming services. These considerations apply with equal force in the transition to ATV. Public television stations do not have a profit stream from which they can finance ATV construction, nor can they arrange private institutional financing. They must raise funds through governmental appropriations, foundation grants, and corporate and viewer donations to fund capital improvements. When funding is to come from private sources, public stations need substantial lead time to structure and implement a capital campaign.

Similarly, where stations must rely partly or entirely on governmental support, they need time to educate legislators of the need for funding and must then wait for legislative bodies to appropriate any required governmental funds.<sup>10</sup> Indeed, Congress will consider the 1997-99 authorization in the next session -- well in advance of when public television is likely to have a

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<sup>10</sup> See Public Television Petition for Clarification and Partial Reconsideration at 9-10.

reasonable estimate of the costs of constructing ATV transmission facilities.

These constraints would severely disadvantage noncommercial stations under the first-come, first-served channel assignment procedure proposed by the Commission. Most noncommercial stations would not be able to apply for ATV channels on the first day that applications are accepted, and would thus be unable to participate in the initial lottery. Moreover, their ability to negotiate favorable channel assignment plans with commercial stations will be greatly impaired by their inability to file applications at the opening gun. While some of those stations may be able to apply for channels later during the initial two-year filing window proposed by the Commission,<sup>11</sup> stations applying later are likely to end up with the least desirable channels. That could result in a reduction of their coverage areas and make it more expensive for them to construct their ATV facilities, since they would be less likely to be able to co-locate their ATV and NTSC transmitters.<sup>12</sup>

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<sup>11</sup> See Further Notice at ¶ 22.

<sup>12</sup> Replication of existing coverage areas is especially important for public television stations licensed to state networks whose transmitter sites have been selected to assure statewide coverage. Requiring these stations to find new transmitter sites for ATV facilities will not only entail significant additional cost, but could also impair their ability to continue serving the entire state.

C. The Commission Should Pair ATV and NTSC Allocations.

As Public Television urged in its Petition for Clarification and Partial Reconsideration, the Commission could avoid these problems and advance Congressional policies supporting nationwide public television service of the highest technical calibre by pairing ATV and NTSC channels. Public Television thus vigorously urges the Commission to adopt a Table of Allotments/Assignments that pairs ATV channels with NTSC channels in a manner that optimizes spectrum efficiency and, to the extent feasible, permits co-location of NTSC and ATV transmitter sites and replication of NTSC coverage.<sup>13</sup>

Those ATV channels that are paired with noncommercial NTSC channels in the Table of Allotments/Assignments must also be reserved for noncommercial use to ensure that they are used to provide public television service and are not diverted to commercial use if the local public television station is unable to file an ATV application during the two year protected filing window. Reserving channels will also protect noncommercial licensees from facing competing applications filed by commercial entities when the noncommercial licensee files its renewal application.<sup>14</sup>

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<sup>13</sup> Commission formulation of a channel pairing plan is compatible with the Commission's desire to give broadcasters an opportunity to express their preferences for particular channels at some juncture in the assignment process. See Joint Broadcasters Comments filed July 17, 1992, Section I.

<sup>14</sup> See Public Television Petition for Clarification and Partial Reconsideration at 8.

**D. Even If the Commission Rejects the Channel-Pairing Proposal, Noncommercial Allotments Must Be Paired To Advance Congressional Policies for Public Television.**

As discussed above, Public Television believes that pairing of all ATV and NTSC channels will result in the most efficient utilization of spectrum, achieve the most economical transition to ATV, and assure the continued availability of nationwide public television service. If the Commission nevertheless decides not to pair all ATV and NTSC channels, Public Television urges it to set aside in the final Table of Allotments a specific ATV channel for each NTSC channel that is currently reserved for noncommercial use and to reserve those ATV channels exclusively for noncommercial use. As Public Television has demonstrated above and in its Petition for Clarification and Partial Reconsideration, this is the only way to assure, under a first-come, first-served regime, that ATV channels are reserved for noncommercial use and that public television stations are not relegated to inferior channel assignments.<sup>15</sup> Pairing and reserving noncommercial channels is thus essential to fulfill Commission and Congressional policies favoring nationwide public television service.

In reserving channels, the Commission should select those channels that, to the extent feasible, will permit existing public television stations to provide ATV service from their existing antenna sites and throughout their current service areas

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<sup>15</sup> See Public Television Petition for Clarification and Partial Reconsideration at 12.

with minimal interference. Assigning ATV channels in this manner will minimize the costs of the transition to ATV for public television stations and assure that public television service remains available to all those who currently enjoy it.

**II. If There Are Insufficient Channels To Accommodate All Existing Licensees And Permittees, The Commission Should Ensure That Operating Public Television Stations Are Assigned ATV Channels.**

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In the event that there is insufficient ATV spectrum to accommodate all existing broadcast licensees, permittees and applicants in a market, the Commission proposes to rank eligible parties in the following order: (1) licensees and permittees with constructed facilities having program test authority; (2) other permittees; and (3) parties with applications for NTSC construction permits on file as of the date of adoption of the Commission's 1991 Notice of Proposed Rulemaking who are ultimately awarded broadcast licenses. See Further Notice at ¶ 9. Public Television supports this proposal to give licensees and permittees with constructed facilities priority in the assignment of ATV channels over other permittees and applicants. As the Commission observes, this approach is consonant with the Commission's treatment of ATV as an enhancement of existing broadcast service and is likely to expedite the transition to the new technology.

The Commission has deferred resolution of the issue of how it will allocate ATV channels if there is insufficient spectrum to accommodate existing licensees and permittees with constructed

facilities. See Further Notice at ¶ 9. Public Television is hopeful that the Commission will not be faced with the need to establish priorities among licensees and permittees with constructed facilities. If such priorities must be established, however, Public Television urges the Commission to ensure that operating public television stations are assigned ATV channels.

Public Television is aware that the Commission has expressed concern over establishing priorities based on the programming offered by existing licensees. See Further Notice at ¶ 9. However, ensuring that public television licensees are awarded ATV channels does not entail a program-based decision any more than does the reservation of channels and, furthermore, is mandated by established Congressional policy. In enacting the Public Broadcasting Act, Congress determined that there is a strong public interest in:

public telecommunications services which will be responsive to the interests of people both in particular localities and throughout the United States, which will constitute an expression of diversity and excellence, and which will constitute a source of alternative telecommunications services for all citizens of the Nation....

47 U.S.C. § 396(a)(5) (1988). Congress has established as a national policy not only that public television be made available to as much of the nation as possible, but also that it be

comparable in technical quality to commercial television.<sup>16</sup>

Those policies cannot be realized unless the Commission takes steps to assure that ATV channels are assigned to noncommercial stations. The Commission must not leave to chance whether the public television system in this country, which has taken decades to build with public and private support, survives the transition to the new ATV technology. Rather, it must ensure that public television service continues to be available throughout the country by assigning suitable ATV channels to all public television stations.

#### CONCLUSION

For the foregoing reasons, the Commission should adopt a Table of Allotments that pairs ATV channels with NTSC channels in a manner that optimizes spectral efficiency and, to the extent feasible, permits co-location of NTSC and ATV transmitter sites and replication of existing coverage areas. If there are insufficient channels to accommodate all existing broadcasters and permittees with constructed facilities, the Commission should


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<sup>16</sup> See, e.g., Public Broadcasting Act of 1967, Pub. L. No. 90-129, 81 Stat. 365 (1967), S. Rep. No. 22, 90th Cong. 1st Sess. 1 (1967), reprinted in 1967 U.S. Code Cong. & Admin. News 1778 (non-commercial programs must approach the highest possible program standards consistent with funds and talent available); Public Telecommunications Financing Act of 1988, U.S. House of Representatives, H.R. Rep. No. 825, 100th Cong., 2nd Sess. 14 (1988) ("it is critical that the public broadcasting system be able to take advantage of technologies such as advanced television technologies including HDTV..."). See also Public Television Comments filed December 20, 1991, at 3-8.



ensure that ATV channels are assigned to operating public television stations.

Respectfully submitted,

  
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